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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,243	02/05/2001	Yoram Kapulnik	01/21632	2822
7590	11/23/2004		EXAMINER	
G E Ehrlich Anthony Castorina 2001 Jefferson Davis Highway Suite 207 Arlington, VA 22202			KUBELIK, ANNE R	
			ART UNIT	PAPER NUMBER
			1638	

DATE MAILED: 11/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/762,243	KAPULNIK ET AL.
	Examiner Anne R. Kubelik	Art Unit 1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 19 August 2004.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 61-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 61 is/are allowed.
- 6) Claim(s) 62 and 64-66 is/are rejected.
- 7) Claim(s) 63 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 8/19/04 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

1. Claims 61-66 are pending.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. The petition filed under 37 CFR 1.84(a)(2) for acceptance of color photographs and color drawings is not granted because there is no explanation of why the color drawings are necessary.
4. The rejection of claim 56 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement is withdrawn in light of Applicant's cancellation of the claim.
5. The rejection of claim 55 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement is withdrawn in light of Applicant's cancellation of the claim.
6. The rejection of claims 54-56 under 35 U.S.C. 102(e) as being anticipated by Albertson et al (US Patent 5,962,769, filed July 1997) is withdrawn in light of Applicant's cancellation of those claims and submission of new claims that do not read on this prior art.
7. The rejection of claims 54-56 and 60 under 35 U.S.C. 103(a) as being unpatentable over Albertson et al (US Patent 5,962,769, filed July 1997) in view of Mariani et al (1997, US Patent 5,689,041) is withdrawn in light of Applicant's cancellation of those claims and submission of new claims that do not read on this prior art.
8. The rejection of claims 54-56 and 59 under 35 U.S.C. 103(a) as being unpatentable over Albertson et al (US Patent 5,962,769, filed July 1997) in view of Maliga et al (1996, US Patent 5,530,191) is withdrawn in light of Applicant's cancellation of those claims and submission of new claims that do not read on this prior art.

***Claim Rejections - 35 USC § 112***

9. Claims 62 and 64-66 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for methods of using streptavidin-encoding constructs with the  $\alpha\beta$  gliadin storage protein signal sequence for secretion and the streptavidin processing sequences, and with and without the bacterial streptavidin signal peptide, expressed from a constitutive promoter or Tob promoter, to transform plants, and plants so obtained, does not reasonably provide enablement for constructs methods of using streptavidin-encoding constructs with a secretion signal sequence and any tissue-specific promoter or any developmental promoter to transform plants, and plants so obtained,. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention commensurate in scope with these claims. The rejection is repeated for the reasons of record as set forth in the Office action mailed 26 March 2004, as applied to claims 54-60.

Applicant's arguments filed 19 August 2004 have been fully considered but they are not persuasive.

Applicant urges that the specification indicates that the Tob promoter is expressed in early embryonic developmental stages, citing Yamamoto et al, 1990 and 1991 (response pg 7).

This is not found persuasive. It is also unclear that any promoter other than the Tob promoter would function to produce a plant with seedless fruit. Yamamoto et al, 1990 and 1991 could not be considered because they were not sent.

Applicant urges that root and embryonic tissues have rapidly dividing meristematic cells (response pg 7).

This is not found persuasive. The claims are not drawn to promoters that function only in rapidly dividing meristematic cells.

Applicant urges that the ability of root specific promoters to function in embryonic cells has been known in the prior art, citing Kyozuka et al and Benfey et al (response pg ).

This is not found persuasive. Kyozuka et al and Benfey et al could not be considered because they were not sent; thus, Applicant's assertion cannot be assessed.

Applicant urges that the instant invention teaches the use of tissue specific or developmental promoters in generating seedless fruit, and citing numerous references (response pg 7).

This is not found persuasive. It is unlikely that any tissue specific or developmental promoter would function to produce a plant with seedless fruit. For example, promoters that are leaf-specific or that are expressed only at senescence are unlikely to work. The references could not be considered because they were not sent.

10. Claim 61 is allowable.

11. Claim 63 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### *Conclusion*

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anne R. Kubelik, whose telephone number is (571) 272-0801. The examiner can normally be reached Monday through Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson, can be reached at (571) 272-0804. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

Anne R. Kubelik, Ph.D.  
November 17, 2004



ANNE KUBELIK  
PATENT EXAMINER